

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEUTSCHE BANK NATIONAL TRUST,

Plaintiff,

v.

ROBERT S. CHAPPELL,

Defendant.

No. C 11-4640 CW

ORDER ADOPTING
MAGISTRATE JUDGE'S
REPORT AND
RECOMMENDATION,
REMANDING CASE,
DENYING MOTION TO
REMAND AS MOOT,
GRANTING PLAINTIFF'S
REQUEST FOR ATTORNEYS'
FEES, IN PART, AND
DENYING DEFENDANT'S
APPLICATION TO PROCEED
IN FORMA PAUPERIS

This is an unlawful detainer action that was filed by Plaintiff Deutsche Bank in state court. Defendant Robert Chappell, who applies to proceed in forma pauperis (IFP), removed it. The removed case was assigned to a magistrate judge who issued an order to show cause (OSC) why the case should not be remanded for lack of federal jurisdiction. Before the magistrate judge issued the OSC, Plaintiff filed a motion to remand, in which it requested attorneys' fees for defending against the frivolous removal. Defendant has not filed an opposition to the motion to remand. On October 7, 2011, the magistrate judge filed a report and recommendation finding no ground for removal and recommending that the case be remanded to the Contra Costa County Superior Court. On October 11, 2011, the case was reassigned to the undersigned district judge.

The Court has reviewed the magistrate judge's order and finds that it is well-reasoned and correctly decided. Therefore, the

1 Court adopts the report and recommendation of the magistrate judge
2 and remands the case to the Contra County Superior Court.

3 The issue of Plaintiff's attorneys' fees was not before the
4 magistrate judge. Plaintiff states that it incurred \$700 in legal
5 fees thus far and foresees that it will incur another \$2,100 if it
6 has to respond to Plaintiff's opposition to its remand motion and
7 appear before the Court to argue the motion. Because there was no
8 basis for removing this action, the Court grants Plaintiff's
9 motion for attorneys' fees and awards the \$700 that it has
10 incurred thus far in defending the improper removal. See 28
11 U.S.C. § 1447(c) (court may order defendant to pay plaintiff's
12 just costs, including attorneys' fees, incurred as a result of
13 removal); Moore v. Permanente Medical Gp., Inc., 981 F.2d 443, 447
14 (9th Cir. 1992) (district court has wide discretion to award fees
15 in removal cases).

16 The Court denies Defendant's application to proceed IFP. The
17 Ninth Circuit has indicated that leave to proceed IFP pursuant to
18 28 U.S.C. § 1915(a) is properly granted only when the plaintiff
19 has demonstrated poverty and has presented a claim that is not
20 factually or legally frivolous within the definition of
21 § 1915(e)(2)(B). O'Loughlin v. Doe, 920 F.2d 614, 616 (9th Cir.
22 1990); Tripati v. First Nat'l Bank & Trust, 821 F.2d 1368, 1370
23 (9th Cir. 1987). In his IFP application, Defendant indicates that
24 he works at Home Depot where he earns \$1,700 net per month. He
25 also indicates that he receives veterans' payments, but does not
26 indicate the amount. Based on this financial information, the
27 Court finds that Defendant does not qualify for IFP status.
28

1 In summary, the Court adopts the magistrate judge's report
2 and recommendation (docket no. 12), remands the case to the Contra
3 Costa County Superior Court, denies the motion to remand as moot
4 (docket no. 7), grants Plaintiff \$700 in attorneys' fees and
5 denies Defendant's application to proceed IFP (docket no. 4).
6 Defendant must pay Plaintiff \$700 within fourteen days of the date
7 of this Order.

8
9 IT IS SO ORDERED.

10
11 Dated: 10/28/2011


CLAUDIA WILKEN
United States District Judge

United States District Court
For the Northern District of California